IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6392 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHA JAMNADAS CHANDARANA 40, HONISTER HEIGHTS

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

MR DV PARIKH for Petitioner

MR IM PANDYA ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/10/2000

ORAL JUDGEMENT

#. Mr.D.V.Parikh, learned advocate appearing on behalf of the petitioner and Mr.I.M.Pandya, learned AGP on behalf for the respondent authorities.

#. In the present petition, RULE has been issued by this Court and ad interim relief in terms of para-13(B) has been granted by this Court on 10th July, 2000 and thereafter, affidavit in reply has been filed by the Resident Deputy Collector on 1st September, 2000. With the consent of both the learned advocates for the parties, the matter is taken up for final hearing.

#. The brief facts of the present petition are as under :-

The land admeasuring 1070 sq.yds. of Rajkot City Survey No.2035 plot No. 15 was granted to one Jayantilal Laljibhai Jobanputra vide Lekh No.10 dated 29th November, 1925 by the erstwhile State of Rajkot. The said land was purchased by Jamnadas Sundarji Chandarana from Jayantilal Laljibhai Jobanputra vide sale deed dated 6-1-1939. On that very day, Jamnadas Sunderji Chandarana gifted the said land to his wife Smt. Parvatiben vide gift deed of the same day. Out of this land, land admeasuring 400 sq.ft was admittedly sold off to another person and on the said land, there exists, even as on date, a residential complex where persons are staying since number of years. Despite the fact that the land was granted to Jayantilal Laljibhai Jobanputra in 1925 and was purchased by Jamnadas Sunderji Chandaran in 1939 as stated, notice was sought to be issued under the provision of the Bombay Land Revenue Code, 1879 by the Revenue Collector, Rajkot on 18th December, 1993 alleging that 670 sq.mtrs of the land in question has not been constructed upon nor any wall built surrounding the same. It was alleged that the original grant was subject to the condition that the land in question would be build upon or compound wall duly constructed within six months. This having not been cone, there was breach of condition of grant rendering the land revertible to the Government. In response to the notice, detailed submissions were made by the petitioner before the Revenue Collector and mainly on the ground that such proceedings initiated after so many years which is not permissible under the law and even on merits it was pointed out to the authority that the land under grant was 1070 sq.yds out of which a building was constructed of 400 sq.mtrs where people are residing since number of years. Apart from this fact, it was submitted that even with regard to the remaining portion of land, there is construction of plinth and this compound wall is constructed in support of the above and to justify the submission, some photographs have been produced by the petitioner in the petition at Annexure-B. The petitioner also pointed out that dispute pertaining to a period of almost 60 years and the noticee was

residing in England since number of years and the noticee was able to trace out and to produce before the revenue Collector, the permission obtained from the erstwhile State of Rajkot dated 10th February, 1939 for the purpose of carrying out construction activities and the petitioner has also produced counterfoil of cheques of dated 1st March, 1939 with regard to purchase of stone, lime [Chuna patti] etc. in order to demonstrate that even at the time of construction was carried out but inspite of these documentary evidence and submission, the Collector passed his order dated 6th July, 1994 holding that there was breach of conditions and that the land would hence vest in Government. Thereafter, the petitioner has approached the Special Secretary, Revenue Department and filed appeal against the said order and stay was also granted in this regard. The said RTS appeal No. 52 / 94 came up for hearing in due course. In the said proceedings of appeal, written submissions were also made by the petitioner. During the pendency of the proceedings, Smt.Parvatiben Chandaran had expired on 17th August, 1994. In light of this fact, necessary application was filed for substitution of heirs namely Smt.Asha Jamnadas Chandaarana - the petitioner herein in the said RTS appeal. According to the petitioner, the Special Secretary (Appeals) have passed order on 8th March, 2000 dismissed the appeal. The said order is under challenge in the present petitioner.

#. The respondent - Resident Deputy Collector, Rajkot has filed affidavit in reply interalia contending the remaining land admeasuring 670 sq.mtrs has not been constructed upon nor any compound wall has been put up surrounding the same. It was also pointed out in the said reply that the original land was subject to the condition that the land in question will be build up or compound wall will be constructed within six months but after the lapse of so many years, this has not been done and therefore, there was clear breach of condition of grant rendering the land revertible to the Government. Therefore, according to the respondent authorities,order passed by the Collector dated 6th July, 1994 and order passed by the Special Secretary dated 8th March, 2000 is legal and valid and proper which does not require any interference by this Court.

#. I have heard the learned advocates on behalf of the respective parties. The main submission of the learned advocate Mr.Parikh appearing on behalf of the petitioner that the proceedings which have been initiated by the respondent authorities after period of 60 years and therefore, such unreasonable delay for initiating the

proceedings for breach of condition by respondent authority is unreasonable and therefore, such powers cannot be exercised by the authority after lapse of 60 years. Mr.Parikh has also submitted that the contention of unreasonable delay itself is sufficient to set aside both orders passed by the authority dated 6th July, 1994 and 8th March, 2000. Mr.Parikh has also submitted that on merits also at the relevant time,there was construction upto plinth level for remaining portion of land and the land under grant was that 1070 sq.yds out of which plot of 400 sq.ft has already been constructed since long and the people are residing since number of years and therefore, according to Mr.Parikh, considering the photographs and documents of cheque and counter foil which have been produced on at Annexure-B to the petition and even on merits also notice which has been issued by the respondent authorities and consequent orders passed by the respondent authorities are also illegal.

#. I have perused the entire order passed by both the authorities as well as show cause notice issued by the Collector dated 18th December, 1993. The said show cause notice is on page 17 wherein, it is mentioned that the Collector has specifically pointed out the policy decision has been taken by the Government that the land which has been lying idle by the persons and even no compound wall is built up by the concerned persons within period of six months then such persons have to build up the compound wall within a period of one month from the date of sale deed and otherwise, such land will vest with the Government. On the basis of such policy decision, the Collector has issued show cause notice to the petitioner that since many years the land in question remained without any construction and no compound wall has been put up by the petitioner and therefore, according to the condition of the land allotted to the petitioner, the land which remains without any construction and since no compound wall has been built up therefore, this land must be vest in the Government. As such, against this proposed decision of the Collector, show cause notice was issued to the petitioner. On page 23 - Annexure-C of the petition, wherein permission was obtained by the petitioner from Municipality, Rajkot for construction of the land in question. The Collector has passed order on 6th July, 1994 and after considering the submission of the petitioner, the Collector has come to the conclusion that the order passed by the Assistant Collector dated 28th September, 1993 is not required to be interfered with and since last 60 years this land remained as it is and no construction has been carried out by the petitioner and even no compound wall has been

built up by the petitioner and therefore, such inaction on the part of the petitioner has been considered to be breach of the condition and ultimately order has been passed by the Collector to the effect that the land must have to be vested with the Government and there is no option with the authority except to pass such order. Thereafter, on page 47 of the petition, the Special Secretary (Appeals), Revenue Department has considered the revision under Section 211 of the Bombay Land Revenue Code. I have perused the order passed by the revision authority and the revisional authority has considered the very samething with specific condition of allotment of land has been violated by the petitioner and even more than 60 years have been passed and no construction has been carried out by the petitioner on the land in question and no compound wall has been built up and therefore, according to the revisional authority, it is clear breach committed by the petitioner and therefore,order passed by the Deputy Collector, Rajkot dated 6th July, 1994 is legal and valid and the same has been confirmed.

#. It is undisputed between the parties that transaction took place in respect of the land in question in the year of 1939. Initially the land was granted to one Jaynatilal Laljibhai Jobanputra vide Lekh No. 10 dated 29th November, 1925 by erstwhile State of Rajkot. The said land was purchased by Jamnadas Sunderji Chandaran from Jayantilal Laljibhai Jobanputra vide sale deed dated 6-1-1939. On that very day, Jamnadas Sunderji Chandaran gifted the said land to his wife Smt. Parvatiben vide gift deed of the same day of this land admeasuring 400 sq.ft was admittedly sold off to another person and on the said land, there exists, even as on date, a residential complex where persons are residing since number of years. After the year 1939 for the first time the Collector, Rajkot has issued show cause notice dated 18th December, 1993 to the petitioner while exercising the powers under Bombay Land Revenue Code. Therefore,the fact remains that about more than 54 years have been passes for initiating the proceedings against the petitioner in respect of the breach of condition committed by the petitioner. This is a total unreasonable exercise of powers by the authority because if no time limit has been prescribed under the statutory provisions for exercising powers then it should be considered such powers must have to be exercised within some reasonable time. Period of more than 54 years is enough to be considered as unreasonable. This Court in case of JANARDAN D. PATEL vs. STATE OF GUJARAT reported in 1997 (1) GLR page 50 has held that under Section 211

of the Gujarat Land Revenue Rules 1972 and Rule 108, the powers of revision under Rule 108 is subject to some limitation as powers of revision under Section 211. The powers must be exercised within a reasonable time as laid down in RAGHVANATHA CASE (SUPRA) (1969) 1 GLR 992 Supreme Court. The Officer exercising the powers under Land Revenue Code cannot aursurp the powers under another enactment. The procedure pointed out as to what should be done in such cases. It is also further observed by this Court that it cannot be gainsaid that the revision powers under the relevant provisions contained in Rule 108(6) of the rules are quite similar to those contained in Section 211 of the Code. What applies to Section 211 of the Code would apply with equal force to Rule 108(6) of the Rules. Similar view has been taken by this Court in case of EVER GREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD. VS SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT reported in 1991 (1) GLR 113. It has also been considered by this Court in a case reported in 1997 (1) GLR page 50.

#. In case of EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD VS. SPECIAL SECRETARY, REVENUE DEPARTMENT, GOVT OF GUJARAT reported in 1991 (1) GLR 113. In case of PARSHOTTAM RAMAJI RATHOD VS. D.D. MISTRY reported in 1999 (2) GLH 310 and so also in case of SHREE RAVIDARSHAN COOPERATIVE HOUSING SOCIETY VS. P.THAKKER reported in 2000 (2) GLR 1639 and in case of MOHAMAD KAVI MOHAMAD AMIN VS. FATMABAI IBRAHIM reported in (1997) 6 SCC Supreme Court Cases page 71. In case of KESHAVLAL A. MANTAR VS. DY. COLLECTOR in Special Civil Application No. 2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI VS. STATE OF GUJARAT delivered in Special Civil Application No. 1778 of 1987 [coram : D.M.Dharmadhikari, CJ.] on 3rd March, 2000. It is also necessary to consider the observations of the Apex Court in case of MANCHHARAM VS. SP PATHAK AND OTHERS in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983, it has been observed that;

> "Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within as reasonable time. This is too well established to need buttressing by precedent. However, one is readily available in State of Gujarat vs. Patel Raghav Natha and others (1970) 1 SCR 335."

#. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities

under Section 84-C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo moto power under Section 84-C, not exercised within reasonable time. In case of MOHAMAD KAVI MOHAMAD AMIN Vs. FATMABAI IBRAHIM (1997) 6 SCC 71, even more than 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976.

##. After considering the above decisions of this Court as well as Apex Court, the petitioner is succeeding in the present petition only on the aspect of unreasonable delay on the part of the respondent authorities for initiating the proceedings under the Bombay Land Revenue Code against the petitioner. Since the petitioner succeeds in the present petition only on the ground of unreasonable delay and hence, this Court does not examine other contentions raised in this petition in respect of the merits of the matter and same are not dealt with separately. Therefore, considering the decision of the Apex Court as well as of this Court as referred to above, I hold that the action under the Act was taken by the respondent authorities after undue and unreasonable delay of more than 54 years. Therefore, in the result, the present petition succeeds and the same is allowed accordingly. The impugned order dated 6th July, 1994 passed by the Collector - Annexure-D and Annexure-G order dated 8th March, 2000 passed by the Special Secretary (Appeals) of Revenue Department, State of Gujarat communicated by order dated 27th March, 2000 - Annexure-G to the petition are hereby quashed and set aside and rule

is made absolute to the aforesaid extent. In the facts and circumstances, the parties are left to bear their own costs.

Date : 16/10/2000 [H.K.Rathod, J.]

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